

**REID COLLINS & TSAI LLP**

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*Attorneys for Richard Fogerty, Joint Official Liquidator of  
Trade and Commerce Bank (In Liquidation)*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

TRADE AND COMMERCE BANK  
(IN LIQUIDATION)

Debtor,

-----X

RICHARD FOGERTY, as Joint Official Liquidator  
of Trade and Commerce Bank,

Plaintiff,

-against-

KESTEN DEVELOPMENT CORP.

Defendant.

-----X

Chapter 15  
Case No. 05-60279 (SMB)

Adv. Pro. No. 10-03611 (SMB)

**AFFIDAVIT REQUESTING  
DEFAULT JUDGMENT**

**AFFIDAVIT REQUESTING DEFAULT JUDGMENT**

Plaintiff, Richard Fogerty ("**Fogerty**"), as the duly appointed Joint Official Liquidator of Trade and Commerce Bank ("**TCB**"), an entity organized under the laws of the Cayman Islands, by the Grand Court of the Cayman Islands respectfully makes this application pursuant Federal

Rule of Civil Procedure 55 and Bankruptcy Rule 7055 for entry of default judgment against defendant, Kesten Development Corp. (“**Kesten**”).

## **I. INTRODUCTION**

On September 16, 2010, Fogerty, as Joint Official Liquidator of Trade and Commerce Bank in Liquidation, brought suit against Kesten pursuant to 11 U.S.C. §§ 1507 and 1509 and the Uniform Foreign Money-Judgments Recognition Act, New York C.P.L.R. §§ 5301-5309 to recognize and enforce a final money judgment obtained against Kesten in the British Virgin Islands.

On September 17, 2010, Fogerty served Kesten through its registered agent in the British Virgin Islands, Sucre & Sucre Trust Limited, the Summons, Notice of Pretrial Conference in an Adversary Proceeding, and a copy of the Complaint.<sup>1</sup> Defendant did not file a responsive pleading or otherwise defend the suit. Service on Kesten was proper under Federal Rule of Bankruptcy Procedure 7004 and Federal Rule of Civil Procedure 4.

On October 19, 2010, Plaintiff filed an Application for Certificate of Default against Kesten in this matter. Upon the issuance by the Clerk of a Certificate of Default, Plaintiff requests that the Clerk enter a default judgment in favor of Plaintiff Fogerty and against Defendant Kesten Development Corporation.

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<sup>1</sup> A copy of the proof of service is attached as Exhibit A and filed with the Court in this adversary proceeding at Dkt. No. 3.

## **II. ARGUMENT**

### **A. Fogerty is Entitled to an Entry of Default Judgment Pursuant to Bankruptcy Rule of Procedure 7055.**

The Clerk of the Court may enter a default judgment when (1) the defendant defaulted for failure to appear, (2) the defendant is not a minor, an incompetent person, a member of the military, the U.S. Government, or federal officer or agency, and (3) the damages are a sum certain or can be made certain by computation.<sup>2</sup>

The Clerk of the Court should enter default judgment against defendant Kesten because the defendant did not file a responsive pleading or otherwise defend suit within 30 days after September 17, 2010, the date of service.<sup>3</sup>

Plaintiff meets the procedural requirements for obtaining a default judgment.

Defendant is not a minor, an incompetent person, a member of the military, the U.S. Government, or federal officer or agency.<sup>4</sup>

Plaintiff's claim is for a sum certain.<sup>5</sup>

## **CONCLUSION**

For the above-stated reasons, Fogerty asks the Court Clerk to enter a default judgment in favor of plaintiff for the sum of \$15,936,369.

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<sup>2</sup> Bank. R. Civ. P. 7055; Fed. R. Civ. P. 55(b)(1). Local R. 7055-2(a).

<sup>3</sup> Bank. R. Civ. P. 7012(a).

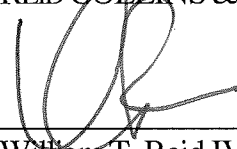
<sup>4</sup> Bank. R. Civ. P. 7055; Fed. R. Civ. P. 55(b)(1).

<sup>5</sup> Bank. R. Civ. P. 7055; Fed. R. Civ. P. 55(b)(1).

Dated: New York, New York  
October 20, 2010

Respectfully submitted,

REID COLLINS & TSAILLP



William T. Reid IV

30 Wall Street

New York, New York 10005

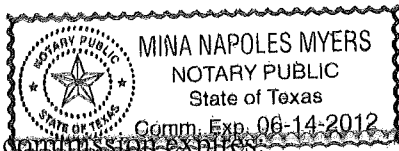
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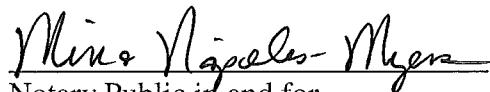
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*Attorney for Richard Fogerty, Joint Official  
Liquidator of Trade and Commerce Bank  
(In Liquidation)*

SUBSCRIBED AND SWORN TO BEFORE ME on this 20<sup>th</sup> day of October, 2010, to  
certify which witness my hand and seal of office.



My commission expires:  
6-14-12

  
Notary Public in and for  
The State of Texas

TO: Kesten Development Corp  
Care of Sucre & Sucre Trust Ltd.  
Chera Chambers  
Main Street  
P.O. Box 3163  
Road Town  
Tortola, British Virgin Islands

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October 2010, I served a true and correct copy of the foregoing **AFFIDAVIT REQUESTING DEFAULT JUDGMENT** by registered mail to the following registered agent for Defendant Kesten Development Corp.:

Sucre & Sucre Trust Ltd.  
Chera Chambers  
Main Street  
P.O. Box 3163  
Road Town  
Tortola, British Virgin Islands

/s/ William T Reid IV  
William T. Reid IV